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ATTORNEYS FOR PLAINTIFFS AND THE CLASS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RIGOBERTO SARMIENTO, GUSTAVO
LUEVANO-VACA, and others similarly situated,

Plaintiffs

vs.

FRESH HARVEST, INC., et al.,

Defendants.

Class Action Case No. 5:20-cv-7974-BLF

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 26, 2023

Time: 9:00 A.M.

Ctrm: Courtroom 3, U.S. District Court, 280
South First St., 5th Floor, San Jose, CA

1 Please take notice that, on October 26, 2023, at 9:00 a.m or as soon thereafter as counsel
2 may be heard, in Courtroom 3 of the San Jose Courthouse, located at 280 South First St., 5th Floor,
3 San Jose, California, Plaintiffs will and hereby do move for an order granting final approval of the
4 class action settlement reached with Fresh Harvest, Inc., SMD Logistics, Inc., Rava Ranches, Inc.,
5 and Fresh Foods, Inc. Specifically, Plaintiffs move for an order:

6 1. Certifying for settlement purposes, for treatment as a class action under Rule 23 of
7 the Federal Rules of Civil Procedure, the Settlement Class of 194 persons that worked for
8 Defendants as hourly commercial drivers, excluding bus drivers, who operated over-the-road
9 highway vehicles in excess of 26,000 pounds gross vehicle weight in California or Arizona at any
10 time during the period of November 12, 2016 to December 10, 2022 and who have not excluded
11 themselves from the settlement.

12 2. Granting final approval of the Settlement and finding the terms of the Settlement to
13 be fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of Civil Procedure,
14 including the amount of the settlement fund; the amount of distributions to class members; the
15 procedure for giving notice to class members; the procedure for members of the Settlement Class to
16 opt out of the Settlement; and the procedure for members of the Settlement Class to object to the
17 Settlement.

18 3. Finding that class members were provided proper and adequate notice of their rights
19 in a manner that satisfies the requirements of due process.

20 4. Directing that all class members who did not timely file a request for exclusion from
21 the Settlement are barred from prosecuting against Defendants the released claims for the time
22 period of their employment in the class period as set forth in the Settlement.

23 5. Directing payment of settlement administration fees by Defendants to Atticus
24 Administration, LLC in the amount of \$10,000 in accordance with the declaration of Bryn Bradley
25 from the administrator, Atticus Administration, LLC, and directing that the remaining \$8,783 be
26 paid from the settlement funds to Atticus Administration.

27 6. Approving Plaintiffs' petition for attorneys' fees in the amount of \$497,016 to be
28 paid from the settlement funds.

1 7. Approving Plaintiffs' costs petition in the amended amount of \$56,987.92 as detailed
2 in Plaintiffs' corrected costs filing. Doc. 231.

3 8. Order the Settlement Administrator to pay the California Labor and Workforce
4 Development Administration after 180 days have passed from the commencement of class member
5 payments. The Settlement Administrator is to pay to \$7,500, from any unclaimed funds, prior to
6 redistribution of such funds. If the amount of unclaimed funds is less than \$7,500, the Settlement
7 Administrator shall notify Defendant Fresh Harvest, Inc., of the difference between \$7,500 and the
8 amount of unclaimed funds, and Fresh Harvest, Inc., shall, within 14 days, transmit that amount to
9 the Settlement Administrator, who shall then, within seven days, transmit \$7,500 to the LWDA.

10 9. Order that within 30 days of the expiration of the original 180 day payment period,
11 the Settlement Administrator shall determine whether it is economically feasible to effect a Second
12 Distribution to Settlement Class Members who have claimed or cashed their first Settlement
13 Payment, and, if so, will make a Second Distribution within 30 days, dividing the remaining money
14 proportionally among those Settlement Class Members who received payments in proportion to
15 their prior Individual Settlement Allocation. If it is not economically feasible to distribute any
16 remaining unclaimed funds, or if there are unclaimed funds remaining after the Second Distribution,
17 such funds shall be donated to the *cy pres* recipient, the Food Bank for Monterey County

18 10. Entering the stipulated settlement as a final order of this Court and retaining
19 jurisdiction to enforce the judgment and stipulation for class action settlement.

20 Plaintiffs' motion is made under Rule 23 of the Federal Rules of Civil Procedure on the
21 grounds that the Settlement is fair, reasonable and adequate and is based on this Notice and attached
22 Memorandum of Points and Authorities, the Declarations of Dawson Morton and Bryn Bradley
23 submitted herewith along with the declarations of Plaintiffs Rigoberto Sarmiento and Gustavo
24 Luevano-Vaca; the Settlement and Stipulation for Class Action Settlement, Affirmative Relief, and
25 Release of Claims previously entered by this Court; the prior Motion for Approval of Fees and
26 Costs, and its accompanying declarations; all other pleadings and papers on file in this action; and
27 any oral argument or other matter that the Court may consider.

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1 Dated: September 14, 2023

LAW OFFICES OF SANTOS GOMEZ

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3 By: *s/ D. Morton*

4 Dawson Morton

5 Attorney for Plaintiffs and the Settlement Class